

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA : 1:13CR47-1
: :
V. : :
: :
STANLEY SCOTT PORTER : FACTUAL BASIS

NOW COMES the United States of America, by and through Ripley Rand, United States Attorney for the Middle District of North Carolina, and as a factual basis under Rule 11, Federal Rules of Criminal Procedure, states the following:

The United States would present the following evidence at trial:

BACKGROUND

SCOTT STANLY PORTER was a resident of Watauga County, North Carolina, and was in the business of operating several companies which provided foreign workers to clients in North Carolina, South Carolina and Georgia, including golf courses in the Myrtle Beach area in South Carolina and the Savannah area in Georgia.

Winterscapes, LLC, was a limited liability corporation organized under the laws of North Carolina with its primary place of business in Boone, Watauga County, North Carolina. At all times material herein, STANLEY SCOTT PORTER was the president and operator of Winterscapes.

Carefree Management, Inc., was a corporation organized under

the laws of North Carolina. STANLEY SCOTT PORTER was president of Carefree Management, Inc. At the direction of STANLEY SCOTT PORTER, Carefree Management, Inc., operated as the parent company of Winterscapes and in such capacity provided banking and administrative services for Winterscapes.

Winterscapes was in the business of providing foreign workers to clients in North Carolina, South Carolina and Georgia. Winterscapes, at the direction of STANLEY SCOTT PORTER, contracted with such clients to provide foreign workers with H-2B temporary visas to work at client golf courses and resorts as laborers. Winterscapes did not possess equipment of any type allowing such company to perform landscaping, to make artificial snow, or to provide janitorial services.

International Labor Management, Inc. ("ILMC"), was a corporation organized under the laws of the State of North Carolina with its headquarters and place of business in Vass, Moore County, in the Middle District of North Carolina. At all times material herein, ILMC was in the business of preparing and submitting petitions on behalf of client companies to the United States government for temporary foreign workers under the H-2A and H-2B visa programs.

THE H-2B PROGRAM

The H-2B non-agricultural worker program is administered by the United States Department of Labor and the United States

Department of Homeland Security Citizenship and Immigration Service (USCIS). The H-2B program allows United States employers to fill temporary nonagricultural jobs. To qualify for H-2B non-immigrant classification, allowing foreign nationals to work for the employer, the employer is required to establish that:

- a. The need for the foreign worker's services or labor is temporary, regardless of whether the underlying job can be described as permanent or temporary. The employer's need is considered temporary if it is a one-time need, a seasonal need, a peak load need, or an intermittent need;
- b. There are not a sufficient number of U.S. workers who are able, willing, or qualified and available to do the temporary work; and
- c. The employment of H-2B foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. Workers.

The H-2B visa program carries a statutory numerical limit, or "cap," which mandates that only 66,000 aliens may be issued a visa or otherwise be provided H-2B status (including through change of status) during any fiscal year.

Before requesting H-2B classification from USCIS, an employer seeking H-2B workers must first submit an Application for Foreign Temporary Labor Certification Application, known as a Form ETA-

9142, to the Department of Labor. In the ETA 9142 the employer must demonstrate that it has conducted recruitment efforts in the geographical area of proposed employment and has not found U.S. workers willing to perform the work set forth and described in the ETA-9142 at the prevailing wage for that area. The ETA-9142 must describe the number of jobs to be filled, the number of H-2B visas requested for foreign temporary workers, and the specific nature and location of the jobs that the H-2B workers will perform in the United States. Upon review of the ETA-9142, the Department of Labor issues a Final Determination letter indicating whether an employer's application has been denied or approved.

After the Department of Labor has issued a Final Determination Letter certifying an employer for use of H-2B workers for specified jobs and job locations, the employer must submit a Form I-129, "Petition for Nonimmigrant Worker," with USCIS to obtain approval for issuance of H-2B visas. As with the ETA-9142, the I-129 petition requires the employer to describe the number of jobs to be filled, the number of H-2B visas requested for foreign temporary workers, and the specific nature and location of the jobs that the H-2B workers will perform in the United States. The employer must attach the certified ETA 9142 to the I-129 petition.

Upon USCIS approval of an I-129 petition, USCIS issues an approval notice informing the employer that its petition has been approved and the H-2b visas have been granted.

At the direction of STANLEY SCOTT PORTER, Winterscapes contracted with ILMC to prepare and file the necessary petitions to obtain H-2B visas for Winterscapes in 2008-2009.

THE WINTERSCAPES PETITION

At the direction of STANLEY SCOTT PORTER, ILMC prepared an I-129 petition for Winterscapes in 2008 requesting one-hundred and fifty H-2B visas for workers to perform work as "snowmakers" at ski resorts in Watauga and Avery Counties in North Carolina under the pretense that Winterscapes was in the business of providing snowmaking services, when in fact, such snowmaking was performed on location by the ski resorts with the resorts' own equipment.

Following approval of the 2008 Winterscapes I-129 petition, Winterscapes transported from Mexico approximately fifty workers on H-2B visas to work at North Carolina ski resorts. No need existed for one-hundred and fifty "snowmakers." In February and March 2009, at the direction of STANLEY SCOTT PORTER, Winterscapes used the remaining H-2B visas issued under the 2008 I-129 Petition to transport from Mexico approximately 100 workers into the United States. These workers, at the direction of STANLEY SCOTT PORTER, were assigned to work for golf courses in South Carolina and Georgia which were clients of Winterscapes. The golf courses, who paid Winterscapes for the provision of the foreign workers, assigned the workers to perform landscaping work.

In 2009 STANLEY SCOTT PORTER directed ILMC to petition for

two-hundred and fifty H-2B workers to perform janitorial and maintenance work at North Carolina ski resorts. At the time the ski resorts only requested between five and eight H-2B workers from Winterscapes. STANLEY SCOTT PORTER intended that the other H-2B visas would be obtained in the fall of 2009 prior to the "cap" on H-2B visas being met, and then transport workers from Mexico in February and March 2010. These workers would then be assigned to golf courses in South Carolina and Georgia, to perform landscaping jobs unrelated to janitorial and maintenance work at North Carolina ski resorts.

At the direction of STANLEY SCOTT PORTER, ILMC prepared and submitted an ETA-9142 application containing the false statement that two-hundred and fifty H-2B workers were needed for jobs as janitors at ski resorts in North Carolina. Following certification of the ETA-9142 by the Department of Labor, ILMC filed an I-129 Petition for Winterscapes at the direction of STANLEY SCOTT PORTER attaching the fraudulent ETA-9142 and requesting two-hundred and forty-six H-2B visas based on the stated need for two-hundred and forty-six foreign workers to be employed as janitors at ski resorts, which statement STANLEY SCOTT PORTER knew to be false. Based on the false statements in Winterscapes 2009 ETA-9142 and I-129 petition, USCIS approved the issuance of two-hundred and forty-six H-2B visas for janitors to work at North Carolina ski resorts.

As directed by STANLEY SCOTT PORTER, ILMC prepared the 2009

Winterscapes ETA-9142 and I-129 petition in the ILMC facility in Vass, Moore County, in the Middle District of North Carolina. The 2009 Winterscapes ETA-9142 and I-129 petition were transmitted by United States mail to the Department of Labor and to USCIS by United States Mail from Vass, Moore County, in the Middle District of North Carolina.

At the direction of STANLEY SCOTT PORTER, Winterscapes paid ILMC for preparing the 2009 ETA-9142 application and I-129 Petition by business check which was then deposited into the bank account of ILMC. The funds used to pay ILMC for preparation of the 2009 ETA-9142 and I-129 petition derived from the proceeds of illegal activity, to wit: visa fraud; in violation of Title 18, United States Code, Section 1546(a).

This, the 20th day of February, 2013.

Respectfully submitted,

RIPLEY RAND
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2013, the foregoing was filed with the Clerk of the Court and I will send notification of such filing to the following:

David B. Freedman, Esq.

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